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October 8, 2009

The Honorable Lawrence S. Bliss, Chair
The Honorable Charles R. Priest, Esq., Chair
The Honorable Members of the Joint Standing Committee
On Judiciary
Maine State House
Augusta, ME 04333

Re: P.L. 2009, c. 230

Dear Senator Bliss, Representative Priest and Members of the Committee:

In response to the Committee's request for comment regarding P.L. 2009, c. 230, I am writing on behalf of the Maine Association of Insurance Companies, the Maine domiciled domestic property and casualty companies which insure Maine homeowners, automobile owners, businesses and medical professionals. Members of the MAIC have a strong interest in communicating with their insureds in response to product information, claims handling and other insurance related information.

Chapter 230, as enacted last session, prohibits the collection under most circumstances of all personal information from minors and would subject anyone who collects this information to both state and private legal action. For example, in the case of an automobile insurer, if any claim information was collected about or from a minor, a carrier may not be able to forward information to the minor or parent about safe driving tools, defensive driving information, how to get their auto repaired, whether to procure a rental car or how to get towed from an accident since these actions could be deemed "any course of action for the minor relating to a product," i.e., the insurance policy. In addition, a carrier may not be able to communicate with the Bureau of Motor Vehicles to determine driving records to accurately process a request for coverage for a minor. Given such examples, and the many others we are certain you will receive, it is clear that the Legislature did not focus on the expansive scope of the legislation and all of its numerous consequences on normal and needed interaction between minors and business. Nor did the Committee understand that the Maine Insurance Code already regulates conduct between carriers and the public.

We agree with those parties that raised the numerous constitutional arguments relating to this legislation and agree with Attorney General Mills that the law is unenforceable for those reasons. However, and just as importantly, the bill contains so many practical infirmities that prohibit necessary and needed information for minors and that limit beneficial commerce that we urge the Committee to advise the full Legislature

to first repeal chapter 230 and then restart the examination on whether additional statutes are needed to limit health related predatory marketing.

In response to the Committee's request for ways to solve the problems related to the bill, we would again suggest that repealing the law first and returning to the issues initially raised by the Sponsor would go a long way to reducing the affected parties and minimizing in significant fashion the practical problems with the bill. We strongly suggest that the current Maine Unfair Trade Practices Act, together with the current state health information privacy laws, as well as the federal COPPA statute already proscribe the behavior targeted by chapter 230. Nevertheless, if the Committee suggests that the focus be on predatory actions involving individually identifying health records or treatment information, is mindful of state and federal health and commerce privacy laws, then we will work to see if a workable and constitutional statute can be fashioned.

The MAIC pledges to work with your committee and with the Legislature to craft a practical solution that is mindful of constitutional constraints and current state and federal laws. I will attend the Committee's deliberations on chapter 230 and am available to answer any questions the members may have

Thank you for the opportunity to comment.

Very truly yours,



Charles C. Soltan

Cc: Ms. Peggy Reinsch, Esq.